

SHELLEY ANN VERDEGO
JOE HOLCOMBE vs UNITED STATES

December 17, 2019

1

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE WESTERN DISTRICT OF TEXAS

3 SAN ANTONIO DIVISION

4
5
6 JOE HOLCOMBE, et al.) NO. 5:18-CV-00555-XR

7 Plaintiffs) (Consolidated cases)

8 -vs-)

9 UNITED STATES OF)

10 AMERICA)

11 Defendant)

12
13
14 Videotaped Deposition of Shelley Ann Verdego

15 Arlington, VA

16 Tuesday, December 17, 2019

17 10:00 a.m.

18
19 Job No: J4766138

20 Pages: 1-195

21 Reported by: Kenneth Norris

SHELLEY ANN VERDEGO
JOE HOLCOMBE vs UNITED STATES

December 17, 2019

16

1 Would you take a look at the second page of
2 Exhibit 2, please?

3 A. Yes, sir.

4 Q. Do you see on the second page of Exhibit 2
5 Paragraph 13? Would you read that into the record
6 please, out loud?

7 A. Paragraph 13?

8 Q. Yes, please.

9 A. "Shelley Verdego, chief law enforcement
10 United States Air Force information pertaining to the
11 Department of Defense reporting information into NICS
12 through the DIBRS database."

13 Q. Okay. And I'll represent to you that this
14 is a document, Exhibit 2 is a document that the United
15 States served on us that describes the subject areas
16 of knowledge that you as a witness may have in this
17 litigation.

18 Is Paragraph 13 of Exhibit 2 an accurate
19 statement of the areas of knowledge that you as a
20 witness have concerning this litigation?

21 A. It is. However, I have no experience with
22 the United States Air Force.

SHELLEY ANN VERDEGO
JOE HOLCOMBE vs UNITED STATES

December 17, 2019

17

1 Q. Okay.

2 Who is your immediate employer?

3 A. The Defense Human Resource Activity, DHRA.

4 Q. And is that a component of the Department of
5 Defense?

6 A. It is. Yes, sir.

7 Q. So other than the fact that you are not an
8 employee of the United States Air Force, is it fair to
9 say that you have information pertaining to the
10 Department of Defense reporting information into NICS
11 through the DIBRS database?

12 A. That's correct. Yes, sir.

13 Q. Okay. And a couple more sort of
14 housekeeping things.

15 Is it fair to say that the United States has
16 designated you to testify on its behalf today?

17 A. It is.

18 Q. Do you have the full authority to speak on
19 behalf of the government concerning the information
20 pertaining to the Department of Defense reporting
21 information into NICS through the DIBRS database?

22 A. I do.

SHELLEY ANN VERDEGO
JOE HOLCOMBE vs UNITED STATES

December 17, 2019

18

1 Q. Do you understand that you have -- you are
2 obligated to testify about all information that is
3 known or reasonably available to the Department of
4 Defense concerning the topics that you've been
5 designated for?

6 MR. STERN: Objection.

7 THE WITNESS: I do understand.

8 BY MR. JACOB:

9 Q. Okay. Can you briefly describe to me how
10 the United States of America prepared you for this
11 deposition?

12 A. Sure. I met with the attorneys from the
13 Department of Justice, the Department of Defense, as
14 well as the United States Air Force. We went over
15 documents and discussed how the testimony would go.

16 Q. Okay.

17 And when you say you met with attorneys for
18 the various agencies of the United States, are those
19 attorneys here in the room today?

20 A. They are.

21 Q. Okay. And other than the attorneys in this
22 room today, have you met with any other attorneys

SHELLEY ANN VERDEGO
JOE HOLCOMBE vs UNITED STATES

December 17, 2019

51

1 for me.

2 A. Yes, sir.

3 Q. And if you wouldn't mind reading the
4 paragraph on USA 17745 to yourself for a second?

5 A. Yes, sir.

6 Q. Okay. Let me ask you some questions about
7 this paragraph and DOD generally.

8 Under DOD manual 7730.47 Volume 1, is it
9 fair to say Agency should provide criminal incident
10 data within 15 days of the end of the month?

11 A. Per the manual, it is 15 work days after the
12 end of each month.

13 Q. Okay. Is it fair to say Agencies have an
14 obligation under federal regulations to timely collect
15 and submit criminal history data including those of
16 violent felons?

17 A. That's correct.

18 Q. Once the Agency submits the data to DMDC --
19 the criminal history data to DMDC, is it true that
20 DMDC should return criminal history data containing
21 errors?

22 A. That's correct.

SHELLEY ANN VERDEGO
JOE HOLCOMBE vs UNITED STATES

December 17, 2019

65

1 Q. It's a true statement that the ability of
2 NICS to determine quickly and effectively whether an
3 individual is prohibited from possessing or receiving
4 a firearm depends on the completeness of the
5 information provided by Federal Agencies to NICS,
6 right?

7 MR. STERN: Objection, it's beyond the
8 scope.

9 THE WITNESS: Yes.

10 BY MR. JACOB:

11 Q. It depends upon the accuracy of the
12 information provided by Agencies to the NICS?

13 MR. STERN: Objection.

14 THE WITNESS: Yes.

15 BY MR. JACOB:

16 Q. Flip to the next page, Page 16666. Do you
17 see that?

18 A. Yes, sir.

19 Q. I'm looking at the first full paragraph
20 starting with, as provided in the presidential
21 memorandum.

22 A. Yes, sir.

SHELLEY ANN VERDEGO
JOE HOLCOMBE vs UNITED STATES

December 17, 2019

67

1 BY MR. JACOB:

2 Q. Do you agree with the document?

3 MR. STERN: Objection, beyond the scope.

4 THE WITNESS: I do if every other factor in
5 place works out.

6 BY MR. JACOB:

7 Q. Well, I'm asking you whether you agree with
8 the statement: The submission of records by Agencies
9 to NICS are critical in preventing gun violence?

10 MR. STERN: Objection, beyond the scope.

11 THE WITNESS: Yes.

12 BY MR. JACOB:

13 Q. And then the next part of that page goes on
14 to identification of relevant records, right?

15 A. Yes, sir.

16 Q. And it lists 10 categories of relevant
17 records that might be submitted to NICS?

18 A. Yes.

19 Q. And this is what you were talking about as
20 well with regard to -- you're looking at this document
21 to determine whether a record might be relevant,
22 right?

SHELLEY ANN VERDEGO
JOE HOLCOMBE vs UNITED STATES

December 17, 2019

77

1 A. So DIBRS doesn't have any connection to this
2 system at all.

3 Q. Okay. And is that by design?

4 A. I believe so.

5 (Verdego Exhibit No. 7 was marked for
6 identification.)

7 BY MR. JACOB:

8 Q. I'm going to hand you a document that's been
9 marked Exhibit 7. And tell me when you have Exhibit 7
10 in front of you and you've had an opportunity to
11 review it.

12 A. I have it in front of me and I have reviewed
13 it.

14 Q. What is Exhibit 7?

15 A. It is the memorandum of understanding
16 between the Department of Defense and the Federal
17 Bureau of Investigation regarding the provision and
18 use of prohibited persons data.

19 Q. Is Exhibit 7 a true and correct copy of that
20 memorandum of understanding?

21 A. It is.

22 Q. And when was Exhibit 7 effective?

SHELLEY ANN VERDEGO
JOE HOLCOMBE vs UNITED STATES

December 17, 2019

78

1 A. 2007.

2 Q. Was this memorandum of understanding ever
3 revoked by either the Department of Defense or the
4 FBI?

5 A. No.

6 Q. So is Exhibit 7, the memorandum of
7 understanding, still effective as we sit here today?

8 A. Yes.

9 Q. And it's been effective ever since 2007?

10 A. Yes.

11 Q. What is the purpose of the memorandum of
12 understanding in Exhibit 7?

13 A. It constitutes an agreement between the
14 Department of Defense and the FBI where the Department
15 will provide data to the FBI for inclusion into the
16 Department of Justice's or the FBI's National Incident
17 Criminal Background Check System.

18 Q. And used for when making determinations
19 under the Brady Act?

20 A. Yes.

21 MR. STERN: Objection, form.

22 BY MR. JACOB:

1 Q. Is this agreement binding on the Department
2 of Defense?

3 A. It is.

4 Q. Let me go through some of this. Before we
5 do, let me ask you: When was the first time you saw
6 Exhibit 7?

7 A. December of 2017.

8 Q. And is that a part of your review to get up
9 to speed with your current role?

10 A. Yes, sir.

11 Q. And when was the last time you reviewed
12 Exhibit 7?

13 A. Last Monday.

14 Q. Is -- was that part of your preparation for
15 this deposition?

16 A. Yes, sir.

17 Q. Do you review Exhibit 7 as a normal course
18 of your -- in the normal course of your business?

19 A. Do I refer to it? No. Have I looked at it?
20 Yes.

21 Just because the attachment, attachment one
22 again, covers all the 10 prohibitors and then kind of

SHELLEY ANN VERDEGO
JOE HOLCOMBE vs UNITED STATES

December 17, 2019

88

1 System?

2 MR. STERN: Objection, form.

3 THE WITNESS: Okay. So if -- just so I
4 understand your question, it's actually, I think you
5 said search, but it's really National Instant Criminal
6 Background Check System.

7 BY MR. JACOB:

8 Q. Can we call it NICS for short?

9 A. We can.

10 You are correct.

11 Q. Okay. I guess, let me make sure I
12 understand what I'm correct about. Was DOD providing
13 DIBRS data to NICS directly?

14 A. I'm sorry. Repeat that question.

15 Q. Was DOD, between 2011 and 2017, providing
16 DIBRS data to FBI's NICS system?

17 A. No.

18 Q. And why not?

19 A. Because DIBRS was set up just for
20 statistical data.

21 Q. Any other reason why FBI was -- scratch
22 that.

SHELLEY ANN VERDEGO
JOE HOLCOMBE vs UNITED STATESDecember 17, 2019
90

1 Q. Uh-huh.

2 A. That's what that is. So it doesn't identify
3 an individual --

4 Q. Sure.

5 A. -- in regards -- in a group.

6 Q. But I'm talking about for individual records
7 that was submitted in DIBRS, does it identify the
8 Agency that --

9 A. Yes, it does.

10 Q. For individuals that are submitted into
11 DIBRS, does it identify the category of prohibited
12 person?

13 A. It does not.

14 Q. Okay. Would you agree that under this
15 memorandum of agreement, the FBI is requesting from
16 DOD and the DOD is agreeing to provide this
17 information, the category of prohibited or restricted
18 person?

19 A. Yes.

20 Q. And I guess what I don't understand is why
21 was DOD -- and let me step back.

22 You said that DOD was providing it to Triple

SHELLEY ANN VERDEGO
JOE HOLCOMBE vs UNITED STATES

December 17, 2019

91

1 I and the National Crime Information Center, right?

2 A. That's right.

3 Q. Was DOD providing DIBRS data concerning
4 individuals who are restricted from selling firearms
5 under the Brady Bill to Triple I?

6 MR. STERN: Objection, form.

7 THE WITNESS: No. Because Triple I is only
8 biometric, so it's only fingerprints, retina, things
9 of that nature. It's not --

10 BY MR. JACOB:

11 Q. Okay. So, DOD was not providing DIBRS data
12 concerning individuals who were prohibited from
13 selling a firearm under the Brady Bill to Triple I?

14 A. That's correct, because it was not -- there
15 was no way to do it.

16 Q. Okay. So let's talk about the National
17 Crime Information Center.

18 Was DOD providing DIBRS data to the FBI
19 National Crime Information Center on individuals who
20 were prohibited from purchasing firearms under the
21 Brady Bill?

22 A. No.

1 Exhibit 8?

2 A. So it's to re-issue the DOD directive to a
3 DOD instruction to establish policy and assign
4 responsibility for criminal incident reporting,
5 implement reporting requirements of section 534 of
6 Title 28 United States Code otherwise known as the
7 Uniform Federal Crime Reporting Act of 1988.

8 Also reporting requirements for the victim
9 and witness assistant notification otherwise known as
10 the Victims Rights and Restitution Act of 1990.

11 And then section 922 Title 18 otherwise
12 known as the Brady Handgun Violence Prevention Act and
13 the Weinberg Amendment to the Gun Control Act. And
14 then sections 16901 through 16928 of Title 42,
15 otherwise known as the Jacob Wetterline and the Megan
16 Nicole Cantu and the Pam Winter Sex Offender
17 Registration and Notification Program, and finally for
18 reporting requirements for public law 107-188.

19 Q. Would it be fair to say that 7730.47 is sort
20 of be a go-to instruction concerning DIBRS?

21 A. Yes.

22 Q. So under the purpose, one of the purposes of

SHELLEY ANN VERDEGO
JOE HOLCOMBE vs UNITED STATES

December 17, 2019

96

1 Exhibit 8, this instruction, was to implement the
2 reporting requirements of section 922 of Title 18
3 known as the Brady Bill, right?

4 A. Yes.

5 Q. Can you tell me how either Directive 7730.47
6 before this or the Instruction 7730.47 and the
7 associated manuals implement the reporting
8 requirements of the Brady Bill?

9 A. So this document basically covers -- this
10 document being the instruction -- talks to kind of
11 what the DOD policy is and then also what the --
12 there's a responsibility section that kind covers who
13 does what within the Department in regard to DIBRS.

14 Q. Okay. And my question's a little bit more
15 specific. How do the set of instructions, the
16 directives and their associated manuals, how do they
17 implement the reporting requirements of the Brady
18 Bill?

19 A. They don't.

20 Q. Okay. Would it be fair to say that the
21 Department of Defense issued these instructions and
22 manuals that don't meet the stated purpose of their --

SHELLEY ANN VERDEGO
JOE HOLCOMBE vs UNITED STATES

December 17, 2019

97

1 the instructions and manuals?

2 MR. STERN: Objection.

3 THE WITNESS: Can you re-ask that?

4 BY MR. JACOB:

5 Q. Sure. Fair to say one of the stated
6 purposes of 7730.47 is to implement the reporting
7 requirements of the Brady Bill, right?

8 A. Yes.

9 Q. And also fair to say that they're not; these
10 manuals and instruction are not implementing the
11 reporting requirements of the Brady Bill?

12 MR. STERN: Objection.

13 THE WITNESS: That's correct.

14 BY MR. JACOB:

15 Q. So would it be fair to say that instructions
16 and manuals, 7730.47 are not meeting their stated
17 purpose?

18 MR. STERN: Objection.

19 THE WITNESS: Yes.

20 BY MR. JACOB:

21 Q. Okay. Let me flip and ask you some more
22 specific questions.

SHELLEY ANN VERDEGO
JOE HOLCOMBE vs UNITED STATESDecember 17, 2019
100

1 A. Okay. I've reviewed it.

2 Q. So Exhibit 9 -- tell me what Exhibit 9 is
3 first.

4 A. It is the Department of Defense Directive
5 Number 7730.47, the Defense Incident-Based Reporting
6 System.

7 Q. Okay. So this was the policy that was
8 re-issued by Exhibit 8 as an instruction, right?

9 A. This directive was re-issued as an
10 instruction, yes.

11 Q. And that instruction is Exhibit 8?

12 A. Yes.

13 Q. And Exhibit 9, directive 7730.47 is the
14 mandatory policy that's applicable to all of DOD
15 between 1996 and 2014. Is that fair?

16 A. It's correct, yes.

17 Q. Okay. And 2014 was when Exhibit 8 was
18 re-issued?

19 A. Yes.

20 Q. Let me ask you some questions about
21 Exhibit 8. And from your understanding, were there
22 substantive changes between Exhibit 9 and Exhibit 8?

SHELLEY ANN VERDEGO
JOE HOLCOMBE vs UNITED STATES

December 17, 2019
106

1 and Air Force to follow the responsibilities and the
2 procedures set out in the two manuals; Volumes 1 and
3 two. Is that fair?

4 A. The directive, Exhibit 8, authorizes the
5 publication of the manuals.

6 Q. Exhibit 9 you mean?

7 A. I'm sorry. Nine, yes.

8 Q. Okay. So what Exhibit 9 is doing is
9 establishing broad level DIBRS policy, right?

10 A. Yes.

11 Q. And saying, okay, we're going to publish
12 these two manuals that DOD and the Agencies have to
13 follow?

14 A. Right. Manuals within the Department of
15 Defense are typically technical. So it's conversion
16 of codes, things of that nature.

17 Q. Right. But the manuals are still required
18 policy for the DOD and Agency to follow per the
19 directives?

20 A. That's correct.

21 Q. Okay. Then let me ask you a couple more
22 questions about this directive, Exhibit 9.

SHELLEY ANN VERDEGO
JOE HOLCOMBE vs UNITED STATES

December 17, 2019
108

1 A. Okay. I'm there.

2 Q. So 4085, Paragraph 5.2 imposes certain
3 obligations on the secretaries of the Military
4 Department and the heads of other DOD components?

5 A. Yes, sir.

6 Q. And one of those obligations that the
7 secretaries of the Military Department and heads of
8 other DOD components should do is, "Ensure compliance
9 with this directive and establish policies and
10 procedures to implement DIBRS within their
11 components." Do you see that?

12 A. I do. Yes, sir.

13 Q. So would it be fair to say what this policy,
14 this directive in Exhibit 9 is telling the secretaries
15 of the Military Departments and heads of the
16 components to do is make sure the employees within
17 your control are complying with this directive and
18 establish procedures to implement that compliance for
19 DIBRS reporting?

20 A. Yes.

21 MR. STERN: Objection, form.

22 BY MR. JACOB:

SHELLEY ANN VERDEGO
JOE HOLCOMBE vs UNITED STATES

December 17, 2019
110

1 be able to report to DIBRS.

2 BY MR. JACOB:

3 Q. Sure. And, also, would it be fair to say
4 that this directive is instructing the secretaries of
5 the Military Departments, heads of DOD components to
6 train their personnel to comply with the associated
7 manuals, the two manuals?

8 A. I mean, in this case, no. Because they
9 weren't -- they hadn't been published.

10 Q. Sure.

11 When they're published, of course. The
12 directive expects the secretaries of the Military
13 Departments and heads of DOD components to train their
14 personnel to comply with those manuals?

15 MR. STERN: Objection.

16 THE WITNESS: Yes.

17 BY MR. JACOB:

18 Q. Would it be fair to say that when the
19 government issues mandatory policies it should train
20 its employees to follow those policies?

21 MR. STERN: Objection to form.

22 THE WITNESS: Yes.

SHELLEY ANN VERDEGO
JOE HOLCOMBE vs UNITED STATES

December 17, 2019

116

1 document.

2 THE WITNESS: So, DIBRS was used as a data
3 repository for all law enforcement activities.

4 BY MR. JACOB:

5 Q. Uh-huh. So would it be fair to say DIBRS
6 was used to centralize the collection of information
7 reportable by DOD components pursuant to the Brady
8 Bill?

9 MR. STERN: Objection.

10 THE WITNESS: That's what it says.

11 BY MR. JACOB:

12 Q. And is it true that between December 7th,
13 2010 and 2018 -- July of 2018, the DOD was using DIBRS
14 to centralize the collection of information that is
15 reportable by DOD components pursuant to the Brady
16 Handgun Violence Prevention Act?

17 A. DOD was using DIBRS to report NIBRS
18 information for the Uniform crime report.

19 Q. Sure. But my question's a little different.

20 My question was whether between 2010 and
21 2018, DOD was using DIBRS to centralize the collection
22 of information reportable by the DOD components

SHELLEY ANN VERDEGO
JOE HOLCOMBE vs UNITED STATES

December 17, 2019

117

1 pursuant to the Brady Bill?

2 A. Yes.

3 Q. Okay. So between 2010 and 2018, DIBRS
4 contained a repository of information that is
5 reportable by DOD components pursuant to the Brady
6 Bill?

7 MR. STERN: Objection.

8 THE WITNESS: It was, with the exception of
9 the category.

10 BY MR. JACOB:

11 Q. Okay. Well, let's take this step by step.

12 I'm going to Page 4937. Do you see that?

13 A. Yes, sir.

14 Q. Do you see the Paragraph C4 on 4937?

15 A. Yes, sir.

16 Q. This paragraph is requiring the USDPNR, and
17 I'm forgetting -- I'm blanking on that acronym.

18 A. Undersecretary of defense for personnel and
19 readiness.

20 Q. Okay. I appreciate that. So this paragraph
21 on Page 48937 is requiring the undersecretary of
22 defense for personnel and readiness to maintain the

SHELLEY ANN VERDEGO
JOE HOLCOMBE vs UNITED STATES

December 17, 2019

121

1 THE WITNESS: I would agree with that.

2 BY MR. JACOB:

3 Q. Would you agree that the more information
4 the FBI has on dangerous felons the better decisions
5 they can make in preventing individuals who shouldn't
6 have guns from getting them?

7 MR. STERN: Objection.

8 THE WITNESS: I agree.

9 BY MR. JACOB:

10 Q. Would you agree that when government
11 Agencies fail to share data on dangerous felons and
12 child abusers they unnecessarily expose the public to
13 a risk of gun violence?

14 MR. STERN: Objection, form.

15 THE WITNESS: I would agree.

16 BY MR. JACOB:

17 Q. Okay. Let's talk, then, about this next
18 page, the database on domestic violence. Are you at
19 Page 4941?

20 A. Yes, sir.

21 Q. Do you see the paragraph Database on
22 Domestic Violence?

SHELLEY ANN VERDEGO
JOE HOLCOMBE vs UNITED STATES

December 17, 2019
122

1 A. I do.

2 Q. Is this referring to the DOD Central Repos
3 -- Registry Database?

4 A. I'm not sure of your question.

5 Q. Sure. I guess maybe a better question would
6 be, what is the database on domestic violence on Page
7 4941 of Exhibit 10 referring to?

8 A. It's referring to central database of
9 information on incidents regarding domestic violence
10 involving members of the military.

11 Q. Okay. And who owns that database?

12 A. The database does not exist.

13 Q. Okay. Why does the database not exist?

14 A. Basically because DMDC did not have the
15 resources or the capabilities to create the database.

16 Q. Okay. So would it be fair to say that this
17 manual, Exhibit 9, requires the DMDC to create that
18 database?

19 A. That's correct.

20 Q. And who is in charge of allocating those
21 resources to the DMDC?

22 A. The director of DHRA, Defense Human Resource

SHELLEY ANN VERDEGO
JOE HOLCOMBE vs UNITED STATESDecember 17, 2019
123

1 Activity.

2 Q. Okay. So I guess I'm confused as to why the
3 Department of Defense would issue a manual telling
4 DMDC to create this database but then not associate
5 the required resources to do that?

6 A. It was an unfunded mandate by Congress.

7 Q. Congress didn't write this manual though.

8 A. No, they did not.

9 Q. The DOD wrote this manual, right?

10 A. That's correct.

11 Q. And the DOD is taking the obligation on
12 itself to create this database of domestic violence,
13 right?

14 A. Correct.

15 Q. And it's an mandatory database that -- or a
16 mandatory obligation?

17 MR. STERN: Objection.

18 THE WITNESS: You're asking me if it's a
19 mandatory obligation?

20 BY MR. JACOB:

21 Q. Yes?

22 A. It is, by law.

SHELLEY ANN VERDEGO
JOE HOLCOMBE vs UNITED STATES

December 17, 2019
124

1 Q. Okay. And not only by law, by the terms of
2 this manual, right?

3 MR. STERN: Objection.

4 THE WITNESS: Correct.

5 BY MR. JACOB:

6 Q. So at no time between 2010 and 2018 did this
7 database on domestic violence exist?

8 A. That's correct.

9 Q. Let me flip you to Page 4943 of Exhibit 10.

10 A. Yes, sir.

11 Q. Do you see the functional areas with DIBRS
12 reporting responsibilities are?

13 A. Paragraph D?

14 Q. Yes.

15 A. Yes.

16 Q. And if I'm not mistaken, that paragraph goes
17 onto Page 4945 of Exhibit 10?

18 A. Yes.

19 Q. It basically divides up the DOD into various
20 functional areas including law enforcement and command
21 actions and corrections?

22 A. That's correct.

SHELLEY ANN VERDEGO
JOE HOLCOMBE vs UNITED STATES

December 17, 2019
133

1 A. Yes, sir.

2 Q. Do you see the definition of DIBRS?

3 A. I do.

4 Q. DIBRS is defined in this manual as, "An
5 incident-based system used to report criminal and
6 specifically identified incidents from initial law
7 enforcement response offender to," -- scratch that.
8 Let me restart that.

9 DIBRS is defined as the, "Incident-based
10 system used to report criminal and specifically
11 identified incidents from initial law enforcement
12 response to offender released from confinement." Did
13 I read that correctly?

14 A. You did.

15 Q. "It includes provisions to comply with the
16 Brady Handgun Prevention Act of 1993." Did I read
17 that correctly?

18 A. You did.

19 Q. Okay. So the very definition of DIBRS is to
20 track these criminal incidents from -- all the way
21 from the beginning to the point where these
22 individuals are released from prison, right?

SHELLEY ANN VERDEGO
JOE HOLCOMBE vs UNITED STATES

December 17, 2019
134

1 A. Correct.

2 MR. STERN: Objection.

3 BY MR. JACOB:

4 Q. At every step of the way?

5 A. Yes.

6 Q. And the very definition of DIBRS requires
7 compliance with the Brady Handgun Violence Prevention
8 Act, right?

9 MR. STERN: Objection, misstates the
10 document.

11 BY MR. JACOB:

12 Q. I'm on Page 5009.

13 A. It includes provisions to comply with the
14 Brady Act.

15 Q. So the definition of DIBRS includes
16 provisions to comply with the Brady Act, right?

17 A. Yes.

18 Q. Let me --

19 A. Can we take a quick break?

20 MR. JACOB: Yes. Sure.

21 VIDEOGRAPHER: The time is 12:29 p.m.

22 We're going off the record.

SHELLEY ANN VERDEGO
JOE HOLCOMBE vs UNITED STATES

December 17, 2019

135

1 (Whereupon, a recess ensued.)

2 VIDEOGRAPHER: The time is 12:39 p.m.

3 We're back on the record.

4 (Verdego Exhibit No. 11 was marked for
5 identification.)

6 BY MR. JACOB:

7 Q. I'll hand you what's been marked as
8 Exhibit 11. Tell me when you have that in front of
9 you and a chance to review it?

10 A. I have it.

11 Q. Can you tell me what Exhibit 11 is?

12 A. Yes. It is the DIBRS entry from the United
13 States Air Force in regards to Devin Kelley.

14 Q. And is it a true and correct copy of the
15 DIBRS entry from the United States Air Force regarding
16 Devin Kelley?

17 A. Yes.

18 Q. And can you just first, broad steps, walk me
19 through what I'm looking at?

20 MR. STERN: Can I interject for a second,
21 Tom?

22 MR. JACOB: Yes.

SHELLEY ANN VERDEGO
JOE HOLCOMBE vs UNITED STATES

December 17, 2019

136

1 MR. STERN: In preparation for Ms. Verdego's
2 deposition, she took notes on this very entry. So I
3 will provide a copy to opposing counsel.

4 MR. JACOB: Okay. I'm just going to mark
5 these notes as Exhibit 12.

6 (Verdego Exhibit No. 12 was marked for
7 identification.)

8 BY MR. JACOB:

9 Q. Can I trade you, please?

10 A. Sure.

11 Q. All right. So you have Exhibit 11 and
12 Exhibit 10 in front of you, right?

13 A. I have 11 and 12.

14 Q. Sorry. Exhibit 11 and Exhibit 12 in front
15 of you?

16 A. Yes, sir.

17 Q. Okay. So tell me what Exhibit 12 is?

18 A. So this is the DIBRS -- I'm sorry, number
19 12?

20 Q. Yes. Tell me what Exhibit 12 is.

21 A. So it's the Air Force's -- Air Force
22 submission to DIBRS for Devin Kelley that I have taken

SHELLEY ANN VERDEGO
JOE HOLCOMBE vs UNITED STATES

December 17, 2019

137

1 notes on basically using the DOD manual 7730-47 Volume
2 1. And I just basically took all the codes in that
3 manual and put them here so that, you know, because
4 there was no way I was going to be able to memorize
5 all this.

6 Q. You know, that's why I marked the manual, so
7 you'd have that in front of you. But this makes it a
8 lot easier.

9 Let me make sure I have this. Exhibit 12 is
10 a true and correct copy of the notes that you made to
11 the DIBRS entry for Devin Kelley, fair?

12 MR. STERN: Objection, misstates testimony.

13 THE WITNESS: Well, this is a copy of the
14 entry. They're not -- they don't -- they're not
15 exactly similar because they're printed out
16 differently. But it is, in fact -- it has the same
17 data.

18 BY MR. JACOB:

19 Q. Sure. Let me re-ask that question.

20 Exhibit 12 is a true and correct copy of the
21 DIBRS entry for Devin Kelley along with the notes that
22 you made on that copy?

SHELLEY ANN VERDEGO
JOE HOLCOMBE vs UNITED STATES

December 17, 2019
138

1 A. Yes.

2 Q. Okay.

3 So let's -- using Exhibit -- and before we
4 get there, the notes interpreting the DIBRS entry for
5 Devin Kelley came from what we have marked as
6 Exhibit 10, the manual, Volume 1 of 7730.47, fair?

7 A. Yes, sir.

8 Q. And specifically we're looking at -- and it
9 starts approximately on Page 49, USA 4950 to 51 with
10 tape -- do you have Exhibit 10 in front of you?

11 You should stop letting him take your
12 papers.

13 Okay. So you have Exhibit 10 in front of
14 you, right?

15 A. Yes, sir.

16 Q. So around Page 4951, we should start seeing
17 some tables that describe the various fields of DIBRS
18 entries. Is that correct?

19 A. That's correct, sir.

20 Q. Okay. And if I'm understanding you
21 correctly, what you did was you took Kelley's DIBRS
22 entry from the Air Force and compared it to

SHELLEY ANN VERDEGO
JOE HOLCOMBE vs UNITED STATES

December 17, 2019
139

1 Exhibit 10, and you made annotations so you could

2 understand what the DIBRS entry was referring to?

3 A. Yes, sir.

4 Q. So let's go through the DIBRS entry for
5 Kelley and we can use either Exhibit 11 or Exhibit 12
6 or both if you prefer?

7 A. Okay.

8 Q. Do you have Exhibit 11 and 12 in front of
9 you?

10 A. I do.

11 Q. Okay. So start by telling me what the
12 administrative segment is?

13 A. So the administrative segment starts with
14 the FBI location number, that's how when it gets
15 transmitted to the uniform crime report it shows kind
16 of the geographic region so that they can better
17 report where the crime occurred.

18 Those are the first -- starts at the letter
19 N and then ends in the letter O. As a point of
20 reference the DOs at end of that number actually
21 refers to the Air Force.

22 Q. Okay.

SHELLEY ANN VERDEGO
JOE HOLCOMBE vs UNITED STATES

December 17, 2019

144

1 Q. So, M means administrative segment?

2 A. Correct.

3 Q. And then A, what does A in the
4 administrative segment mean?

5 A. It is the report type, which is an add. So
6 they added something to the report.

7 Q. Okay. So it would have been first added on
8 October 21st, 2013, Exhibit 11?

9 A. Yes.

10 Q. Do you know what happened on October 21st,
11 2013 that prompted this addition to DIBRS?

12 A. I do not.

13 Q. What is the Y in the administrative segment
14 mean?

15 A. The Y means was it reported to NIBRS.

16 Q. It means what?

17 A. Is it reportable -- is it reportable to
18 NIBRS.

19 Q. Okay. So the Y doesn't mean, was it
20 actually reported to DIBRS.

21 A. Correct. It just means should it be a NIBRS
22 entry.

1 Q. And what differentiates offenses that should
2 be a NIBRS entry versus should not be a NIBRS entry?

3 A. In this case none, because the report
4 actually is for NIBRS.

5 Q. What do you mean by that?

6 A. Meaning that when you report something to
7 DIBRS, it is for inclusion into the National
8 Incident-Based Reporting System.

9 Q. So are all DIBRS reports marked for
10 inclusion into NIBRS?

11 A. It is my understanding they are, yes.

12 Q. Then why even have that Y segment?

13 A. I think it is -- this is speculation but I
14 believe this is a requirement through -- for the FBI.

15 Q. Okay. What about the I following the Y in
16 the administrative segment?

17 A. The I is asking whether or not this was an
18 incident or -- incident/report occurred date category.

19 And so this was the incident. This tells
20 you it was an incident. And then the following
21 numbers tell you the date of the incident.

22 Q. So what is the data of the incident?

SHELLEY ANN VERDEGO
JOE HOLCOMBE vs UNITED STATES

December 17, 2019
146

1 A. It is May 25th, 2011.

2 Q. So if we go back to our manual --

3 A. Uh-huh.

4 Q. -- do you have that in front of you?

5 A. I do.

6 Q. And you go to Page USA 4943, where it says,
7 "Law enforcement should begin the DIBRS reporting
8 process when law enforcement officials respond to a
9 credible report of a criminal incident."

10 A. Yes, sir.

11 Q. Is it fair to say that what Air Force
12 through its law enforcement employees are telling DMDC
13 is that on 2011, 5-25 they received a credible report
14 of a criminal incident?

15 A. Yes.

16 Q. Okay. And do you have 4943 in front of you?

17 A. Yes.

18 Q. Do you see Paragraph C?

19 A. Yes.

20 Q. It says, "No organization shall submit PII
21 to the DMDC that could jeopardize or compromise any
22 ongoing investigation." Do you see that? Did I read

SHELLEY ANN VERDEGO
JOE HOLCOMBE vs UNITED STATES

December 17, 2019
194

REPORTER'S CERTIFICATE:

Commonwealth of Virginia


County of Arlington, to wit:

I, KENNETH NORRIS, a Notary Public of
the Commonwealth of Virginia, County of Arlington, do
hereby certify that the within named witness
personally appeared before me at the time and place
herein set out, and after having been duly sworn by
me, according to law, was examined.

I further certify that the examination
was recorded stenographically by me and this
transcript is a true record of the proceedings.

I further certify that I am not of
counsel to any of the parties, nor in any way
interested in the outcome of this action.

As witness my hand and notarial seal
this 17th day of December, 2019.



KENNETH NORRIS

Notary Public

My Commission Expires: 2-28-21; Notary Reg#: 7501816

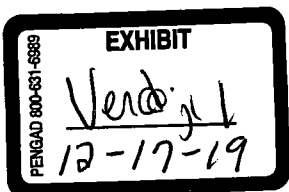
IN THE UNITED STATES DISTRICT FOR
THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

JOE HOLCOMBE, et. al,	§	NO. 5:18-CV-00555-XR
	§	
Plaintiffs	§	Consolidated with:
	§	5:18-cv-00712-XR (<i>Vidal</i>)
	§	5:18-cv-00881-XR (<i>Uhl</i>)
vs.	§	5:18-cv-00944-XR (<i>Ramsey</i>)
	§	5:18-cv-00949-XR (<i>McNulty</i>)
UNITED STATES OF	§	5:18-cv-00951-XR (<i>Wall</i>)
AMERICA,	§	5:18-cv-01151-XR (<i>Amador</i>)
	§	5:19-cv-00184-XR (<i>Brown</i>)
Defendant	§	5:19-cv-00289-XR (<i>Ward</i>)
	§	5:19-cv-00506-XR (<i>Workman</i>)
	§	5:19-cv-00678-XR (<i>Colbath</i>)
	§	5:19-cv-00691-XR (<i>Braden</i>)
	§	5:19-cv-00706-XR (<i>Lookingbill</i>)
	§	5:19-cv-00714-XR (<i>Solis</i>)
	§	5:19-cv-00715-XR (<i>McKenzie</i>)
	§	5:19-cv-00805-XR (<i>Curnow</i>)
	§	5:19-cv-00806-XR (<i>Macias</i>)

NOTICE OF DEPOSITION

To: Defendant, United States of America, by and through
its attorney, Paul Stern, United States Department of
Justice, Three Constitution Square, 175 N Street,
N.E., Washington, DC 20002.

From: Plaintiffs, Vidal, et. al, 5:18-cv-712-XR, McNulty, et.
al, 5:18-cv-00949-XR; Wall, et. al, 5:18-cv-00951-XR;
Solis, et. al, 5:19-cv-00714-XR, and McKenzie, 5:19-cv-
00715-XR.



Please take notice that under Fed. R. Civ. P. 30(b)(6), the above Plaintiffs will take the deposition of the Defendant, United States of America, by oral examination using video, audio, and stenographic means, at the following location and date:

Date: September 12, 2019

Location: United States Attorney's Office
601 NW Loop 410, Ste. 600
San Antonio, Texas 78216

Time: 9:00 AM CST

Court Reporter: Res Ipsa or designee

Videographer: Res Ipsa or designee

The deposition will continue from day to day until completed, with such breaks, as necessary. Pursuant to Rule 30(b)(6), the United States of America shall designate one or more officers, directors, managing agents, or other persons who consent and are knowledgeable to testify on the United States' behalf with respect to the subject matters set forth in attached Exhibit A. A request to produce documents permitted under Rule 30(b)(2) is attached as Exhibit B.

DEFINITIONS

Please see applicable definitions in W.D. Tex. Local Rule CV-26(b)(1)–(7). The singular form of any word shall include within its meaning the plural form of the word and vice versa. For your convenience, Plaintiffs have duplicated those definitions here:

Communication. The term “communication” means the transmittal of information (in the form of facts, ideas, inquiries or otherwise).

Document. The term “document” is defined to be synonymous in meaning and equal in scope to the usage of this term in Federal Rule of Civil Procedure 34(a). A draft of a nonidentical copy is a separate document within the meaning of this term.

Identify (With Respect to Persons). When referring to a person, to “identify” means to give, to the extent known, the person’s full name, present or last known address, e-mail address, and telephone number, and when referring to a natural person, additionally, the present or last known place of employment. Once a person has been identified in accordance with this subparagraph, only the name of that person need be listed in response to subsequent discovery requesting the identification of that person.

Identify (With Respect to Documents). When referring to documents, “to identify” means to give, to the extent known, the (i) type of document; (ii) general subject matter; (iii) date of the document; and (iv) author(s), addressee(s), and recipient(s).

Parties. The terms “plaintiff” and “defendant” as well as a party’s full or abbreviated name or pronoun referring to a party mean the party and, where applicable, its officers, directors, employees, partners, corporate parent, subsidiaries or affiliates. This definition is not intended to impose a discovery obligation on any person who is not a party to the litigation.

Person. The term “person” is defined as any natural person or business, legal or governmental entity or association.

Concerning. The term “concerning” means relating to, referring to, describing, evidencing or constituting.

ACRONYMS

The following acronyms apply to this notice:

ACRONYM	MEANING
AFOSI	Air Force Office of Special Investigations
CJIS	Criminal Justice Information Services
DIBRS	Defense Incident-Based Reporting System
DMDC	Defense Manpower Data Center
DoD	Department of Defense
DODIG	Department of Defense Inspector General
I2MS	Investigative Information Management System
IAFIS	Integrated Automated Fingerprint Identification System
NCIC	National Crime Information Center
NGI	Next Generation Identification
NIBRS	National Incident-Based Reporting System
NICS	National Instant Criminal Background Check System
USAF	United States Department of Air Force

Respectfully Submitted,

/s/ Jason P. Steed

Jason P. Steed

JSteed@kilpatricktownsend.com

Texas Bar No. 24070671

**Kilpatrick Townsend & Stockton
LLP**

2001 Ross Avenue, Suite 4400

Dallas, TX 75201

Office 214-922-7112

Fax 214-853-5731

Counsel for Vidal, McNulty, and
Wall

/s/ Jamal K. Alsaffar

Jamal K. Alsaffar

JAlsaffar@nationaltriallaw.com

Texas Bar No. 24027193

Tom Jacob

TJacob@nationaltriallaw.com

Texas Bar No. 24069981

**Whitehurst, Harkness, Brees,
Cheng, Alsaffar & Higginbotham
& Jacob PLLC**

7500 Rialto Blvd, Bldg. Two, Ste 250
Austin, TX 78735

Office 512-476-4346

Fax 512-476-4400

Counsel for Vidal, McNulty,
McKenzie, Solis, Ramirez
and Wall

CERTIFICATE OF SERVICE

By our signatures above, we certify that a copy of this pleading, Notice of Deposition, has been sent to the following on August 22, 2019 via email and certified mail, return receipt requested.

JOSEPH H. HUNT
Assistant Attorney General
United States Dept. of Justice
Civil Division

JOHN PANISZCZYN
Civil Chief
United States Attorney's Office
Western District of Texas

JOHN F. BASH
United States Attorney
Western District of Texas

JAMES G. TOUHEY, JR.
Director, Torts Branch
United States Dept. of Justice
Civil Division

KIRSTEN WILKERSON
Assistant Director, Torts Branch
United States Dept. of Justice
Civil Division

STEPHEN E. HANDLER
Senior Trial Counsel, Torts Branch
United States Dept. of Justice
Civil Division

PAUL DAVID STERN
Trial Attorney, Torts Branch
United States Dept. of Justice
Civil Division
CLAYTON R. DIEDRICHS
Assistant United States Attorney

STEPHEN TERRELL
Trial Attorney, Torts Branch
United States Dept. of Justice
Civil Division
JAMES E. DINGIVAN
Assistant United States Attorney

JIM F. GILLIGAN
Assistant United States Attorney

EXHIBIT A

Examination is requested on the following subject matter areas:

1. The identity of persons, and identity and location of documents referenced in the DODIG-2015-011 Report.
2. The identity of persons, and identity and location of documents referenced in the DODIG 2015-081 Report.
3. The identify of persons, and identity of location of documents referenced in the DODIG 2018-035 Report.
4. The identity of persons, and identity and location of documents referenced in the DODIG-2019-030 report.
5. Training or education USAF personnel received concerning fingerprint collection and final disposition submission procedures, including submission to the FBI CJIS, NIBRS, or DIBRS. This topic concerns training or education given to personnel involved in the investigation, court-martial, or confinement of Devin Kelley between July 1, 2011 and December 14, 2012, whether they received the training at the time or some earlier time. This topic includes, but is not limited to: (a) the training or education provided by the Air Force Security Forces Academy at Joint Base San Antonio-Lackland, Texas; (b) the 65-day course at the security Forces Academy covering basic military police functions; (c) formal or informal training; (d) "on-the-job" training or education; (e) recurring or annual training or education; and (f)

training or education provided by the Naval Corrections Academy.

6. Policies, procedures, practices, checklists, and protocols concerning Air Force Security Force's and AFOSI's execution of DoD Instruction 7730.47-M Volume 1. This topic includes, but is not limited to, the monthly submission of information to the DMDC and the DIBRS database for centralization of the collection of information reportable by the DoD Components pursuant to The Brady Handgun Violence Prevention Act of 1993. This topic includes but is not limited to, information concerning I2MS, as noted on pages 8–9 of DODIG-2015-011.
7. Policies, procedures, practices, checklists, and protocols concerning the FBI CJIS NICS database and how other databases such as Next Gen (NGI) (formerly Integrated Automated Fingerprint Identification System (IAFIS)), NCIC, NIBRS, and Uniform Crime Report (UCR) are used to populate it. This topic includes, but is not limited to, the process by which the FBI receives and subsequently uses the information from DIBRS to prevent the purchase of firearms by any person prohibited by one of the eight listed categories.
8. Policies, procedures, practices, checklists, and protocols concerning the Air Force Security Force's and AFOSI's execution of DoD Instruction 5505.11. This topic includes, but is not limited to, the submission of fingerprints and final disposition reports to FBI CJIS by both the Air Force Security Force and AFOSI. This topic includes, but is not limited to, the process by which Devin Kelley's

fingerprints and final disposition report should have been reported to FBI CJIS.

9. Policies, procedures, practices, checklists, and protocols concerning probable cause determinations by a Staff Judge Advocate, especially to include, when a determination should be made, and any training given to guide Judge Advocates on probable cause determinations.
10. Policies, procedures, practices, checklists, and protocols concerning the USAF Corrections System policy for post-trial inmates during in-processing concerning the submission of fingerprints and final disposition reports to the FBI. This topic includes, but is not limited to, the collection of Devin Kelley's fingerprints and submission of his final disposition report by the confinement facility personnel.
11. Policies, procedures, practices, checklists, and protocols put in to place following DODIG-2015-081 pertaining to the AFOSI's NCIC program director to ensure that fingerprints and final disposition reports are submitted to IAFIS (NGI) according to DoD Instruction 5505.11.

EXHIBIT B

Under Fed. R. Civ. P. 34(b)(2), you are commanded to attend and testify at the above specified time and place; you are commanded to produce the below designated documents, electronically stored information, or tangible things in your possession, custody, or control. The following requests do not seek any communication to or from your legal counsel. Please produce a true and correct copy of the following within thirty (30) days of this notice or at the deposition, whichever is sooner. If produced before the deposition date, please produce these documents electronically. If produced at the deposition, please produce a physical copy of the document for examination and marking as a deposition exhibit, as well as an electronic version of the document in its native format.

1. Your current curriculum vitae or resume.
2. Documents you reviewed in preparation for this deposition.
3. Policies, procedures, practices, checklists, or protocols concerning the topics covered in Exhibit A.
4. Reports, notes, logs, letters, communication, or other documents you have authored or have been sent to you concerning this case or the topics covered in Exhibit A.
5. Charts, diagrams, PowerPoints, illustrations, or other demonstrative aids that illustrate the relationships or communication between any of the following: the FBI

CJIS, NICS, NGI, DMDC, NIBRS, DIBRS, IAFIS, or NCIC.

6. Handouts, manuals, course materials, or other documents concerning the training or education of any Air Force employee on fingerprint collection and final disposition submission procedures.

Submitted on October 21, 2013:

Administrative Segment M:

NM01900DO0000077711AYJMAYI201105250000201106090001 000000

Offense Segment F:

NM01900DO0000077711AYJFAA128-G-CNNN20YNM 99 AXN

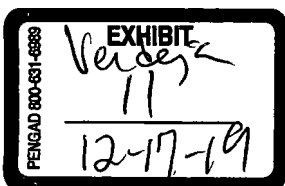
Arrestee/Offender Segment A:

NM01900DO0000077711AYJAC01AKELLEY	DEVIN	PATRICK
EM03FRS63424548419910212	TXUS 20	
NM01900DO0000077711AYJAC02AKELLEY	TESSA	KAYLYNN
S [REDACTED]	0000	

Victim Segment V:

NM01900DO0000077711AYJVA001A128-G-CA
I 0100M DN09 06 IBON 01AF02AB

No data for Property Segment P



USA00016836

DIBRS Entry for Kelley (003)

Submitted on October 21, 2013:

Administrative Segment M: date of incident date reported ordered

NM01900DQ000077711AYJ MAY 12 2011 0525 0000 2011 0609 0001

Victims
- witness
000000

FBI loc #

Offense Segment F:

NM01900DQ000077711AYJFAA128-G(CNNN20YNM)

99 NO weapon used AXN

12S-G - Battery on child under 16

FBI loc #
ORI

incident #

UICMS/Police

Arrestee/Offender Segment (A):

UICMS

how many offenders

NM01900DQ000077711AYJAC01AKELLEY PF

DEVIN

PATRICK

TXUS 20 - age

FBI loc #
ORI

incident #

add

EM03ERS63424548419910212

enlisted

SSN

DOB

NM01900DQ000077711AYJAC02AKELLEY grade

TESSA

KAYLYNN

FBI loc #
ORI

incident #

SSN

regular

0000
unknown age

considered suspect

Victim Segment V:

NM01900DQ000077711AYJVA001A128-G-CA accessory

0100M

DN09 06 IBCN 01AF02AB

FBI loc #
ORI

attachment

Victim

I - ind.

Kids age

white

(58) other

other major injuries

Broken bones

possible internal injury

No data for Property Segment P

DO = AFOSI

drugs computer
CNNN20YNM New Mexico
complete no alcohol
military installation
Residence

sexual
01 AF 02 AB
relation (61)
relation child

multiple submission

